

8th day of March, 2002

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner) (deceased)
c/o David J. Praska
Silton, Seifert, Carlson, Gamble & Schubert, S.C.
331 East Washington Street
Appleton, WI 54911-5451

DECISION

MRA- 44/51068

PRELIMINARY RECITALS

Pursuant to a petition filed November 5, 2001, under Wis. Stat. § 49.455(8)(a)5. (1999-00) and Wis. Admin. Code § HFS 103.075(8)(a)5. (November 2000), to review the Community Spouse Resource Allowance (CSRA) under the spousal impoverishment rules of the Medical Assistance (MA) program, a hearing was held on February 19, 2002 in Appleton, Wisconsin.

Hearings scheduled for January 15, 2002 and December 27, 2001 were rescheduled at petitioner's request.

The issue for determination is whether, under the spousal impoverishment rules of the MA program, the Community Spouse Resource Allowance (CSRA) for petitioner's wife may be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioners:

(petitioner) [deceased; not present at
February 19, 2002 hearing]
c/o David J. Praska
Silton, Seifert, Carlson, Gamble &
Schubert, S.C.
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Represented by:

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Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street
Room 250
P.O. Box 309
Madison, Wisconsin 53707-0309

BY: Sue Verbrick, ESS Lead Worker
Outagamie County Health and Human Services Department
Economic Support Division
Human Services Building
Level 2

401 South Elm Street
Appleton, Wisconsin 54911-5985

OTHER PERSONS PRESENT:
(petitioner's wife)

HEARING OFFICER:
Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx; CARES # xxxxxxxxxxx; Date of Birth xx/xx/xxxx; Date of Death February 6, 2002), at the time of his death, was married, a resident of Outagamie County, and lived in a nursing home (he entered the nursing home on July 6, 2001); petitioner's wife lives in the community. Exhibits #2, #3 & #4.
2. Petitioner applied for MA, under spousal impoverishment rules, with the County on August 3, 2001. Exhibits #3 & #4.
3. By a Notice of Decision dated September 21, 2001 petitioner's MA application was denied due to excess assets. Exhibits #1 & #2.
4. Petitioner's monthly income was at least \$922.00 social security and \$458.70 pension for a total of at least \$1,380.70 per month. Exhibit #3.
5. In this case the standard Community Spouse Resource Allowance (CSRA) amount is \$73,238.34 (\$146,476.68/2). Exhibits #3, #4 & #5.
6. In this case, the Minimum Monthly Maintenance Needs Allowance (MMMNA) was \$1,944.39 on the date of application (August 3, 2001) and at all times prior to that. Exhibit #3.
7. Petitioner's wife's monthly income is \$530.00 social security and the monthly income generated by the \$73,238.34 standard CSRA. Exhibits #3, #4 & #5.
8. The yearly income generated by the \$73,238.34 standard CSRA exceeds \$944.28. Exhibits #4 & #5.

DISCUSSION

Under the normal MA eligibility rules a person is not eligible for MA unless they are first in poverty. If these rules applied to situations where one spouse is in a nursing home and the other in the community, the community spouse would be forced into poverty before the spouse in the nursing home would be eligible for MA. This is because married couples have a legal claim to the income and assets of one another.

To avoid forcing community spouses into poverty, persons who are residents of a nursing home and still have a spouse living in the community may apply for MA under special rules known as "Spousal

Impoverishment" rules. These rules are designed to allow the community spouse to keep a certain portion of the married couples assets and income. See, Wis. Stat. § 49.455 (1999-00); Wis. Admin. Code HFS § 103.075 (November 2000); MA Handbook, Appendix 23.0.0.

The amount of assets a community spouse is allowed to keep is called the "Community Spouse Resource Allowance" (CSRA) [also sometimes called the "Community Spouse Asset Share" (CSAS)]. There is a standard CSRA amount. In this case the standard CSRA amount is \$73,238.34 (\$146,476.68/2). See, Wis. Stat. § 49.455(6)(b) (1999-00); MA Handbook, Appendix 23.4.3.2.

The CSRA can be invested by the community spouse to generate income, which the community spouse can then use for living expenses. If the amount of income generated by the CSRA, combined with any other income the community spouse receives (or should receive), does not rise to a certain level known as the "Minimum Monthly Maintenance Needs Allowance" (MMMNA), an increase in the CSRA may be requested by way of the fair hearing process. The purpose of increasing the CSRA is to give the community spouse a greater amount of assets to invest, thereby generating a greater amount of income, which can then be used by the community spouse for living expenses. In this case, petitioner has requested that the CSRA be increased by the fair hearing process. See, Wis. Stat. §§ 49.455(6)(b)(3) & (8)(d) (1999-00); Wis. Admin. Code §§ HFS 103.075(8)(a)5. & (8)(d) (November 2000); MA Handbook, Appendix 23.4.3.2.

The MMMNA is monthly income that is the lesser of the following: \$2,232.00; or, \$1,935.00 plus excess shelter allowance. Wis. Stat. §§ 49.455(4)(a)2. & (c) (1999-00); Wis. Admin. Code § HFS 103.075(6)(b)1. & (c)2. (November 2000); MA Handbook, Appendix 23.6.0.Section A. In this case, the MMMNA was \$1,944.39 on the date of application (August 3, 2001) and at all times prior to that.

The law specifically provides, however, as follows:

"Except in exceptional cases which would result in financial duress for the community spouse, the [CSRA may not be increased by the fair hearing process] unless the institutionalized spouse makes available to the community spouse the [MMMNA] or, if the institutionalized spouse does not have sufficient income to make available to the community spouse the [MMMNA], unless the institutionalized spouse makes all of his or her income, except for an amount equal to the sum of the personal needs allowance . . . and any family allowances . . . paid by the institutionalized spouse and the amount incurred as expenses for medical and remedial care for the institutionalized spouse . . . , available to the community spouse . . ."

Wis. Stat. § 49.455(8)(d) (1999-00); See also, *Wisconsin Department of Health and Family Services v. Irene Blumer*, 534 U.S. ___, 122 S. Ct. 962 (February 20, 2002) [reversing and remanding *Blumer v. Wisconsin Department of Health and Family Services*, 237 Wis. 2d 810, 615 N.W.2d 647 (2000)].

This is known as the "income first" rule. Under the income first rule, except in exceptional cases which would result in financial duress for the community spouse, the CSRA may be increased only if the institutionalized spouse's income, if made available to the community spouse, is not sufficient to raise the community spouse income to the MMMNA. The institutionalized spouse's income, for purposes of the income first rule, excludes the personal needs allowance, any family allowances paid by the institutionalized spouse, and the amount incurred as expenses for medical and remedial care for the institutionalized spouse.

The personal needs allowance is \$45.00 per month. MA Handbook, Appendix 30.5.1.1. There is no claim in this case that petitioner paid any family allowances or incurred any expenses for medical and remedial care for himself. Thus, petitioner can make \$1,335.70 per month available to his wife (\$1,380.70 minus \$45.00 personal needs allowance). This amount plus petitioner's wife's social security income (\$530.00 per

month) would provide an income of \$1,865.70 per month to petitioner's wife (\$1,335.70 plus \$530.00). To this amount must be added income generated by the \$73,238.34 standard CSRA.

As noted above, the MMMNA in this case is \$1,944.39. This means that in order to meet the MMMNA petitioner's wife will need monthly income of \$78.69 (\$1,944.39 minus \$1,865.70) in addition to the income she can receive from petitioner and social security. The \$78.69 needed per month amounts to \$944.28 per year (\$78.69 times 12). The yearly income generated by the \$73,238.34 standard CSRA exceeds \$944.28. Therefore, the CSRA cannot be increased by the fair hearing process.

Finally, there is no claim in this case that not increasing the CSRA by the fair hearing process will result in financial duress for petitioner's wife. The income of petitioner's wife would exceed the MMMNA without the need for an increase in the CSRA.

CONCLUSIONS OF LAW

For the reasons discussed above, the CSRA for petitioner's wife can not be increased.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision.
The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2002.

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
315/SPM